



C.M.A(MD)No.942 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.10.2022

Pronounced on : 12.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.942 of 2013

Nagappan

...Appellant / Petitioner

Vs

1.Karuppaiah

2.Jai Ganesh

3.The National Insurance Co., Ltd.,
represented by its Branch Manager,
Dindigul.

...Respondents/ Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to allow this appeal in M.C.O.P.No.563 of 2011 on the file of the Motor Accidents Claims Tribunal(Additional District Judge / Fast Track Court No.2), Tirunelveli.

For Appellant : Mr.T.Selvakumaran

For R1 and R2 : No appearance

For R3 : Mr.J.S.Murali



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order in MCOP No.536 of 2011 on the file of the Motor Accidents Claims Tribunal(Additional District Judge / Fast Track Court No.2), Tirunelveli. The appellant herein is the claimant, respondents herein are the respondents in the claim petition.

2.Brief substance of the claim petition is as follows:

On 07.12.2007, at about 8.45 a.m., while the petitioner was travelling in a lorry bearing registration number TCT 509 along the Dindigul - Karur main road, near Eswari Hollow Block Company, another lorry bearing registration number TCQ 7587, came from the opposite direction in a rash and negligent manner, dashed against the petitioner's lorry. The first respondent lorry was the cause for the accident. The petitioner sustained injuries. He was admitted in Dindigul City Hospital. Then he was admitted in Perumalpuram Karthik Hospital. The petitioner sustained permanent disability. He claim a sum of Rs.10 Lakhs as compensation.



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3. Brief substance of the counter filed by the second respondent is as follows:

The owner and the insurer of the lorry are necessary parties. The age, profession and income, injuries, medical expenses, disability are to be proved. The mode of accident is denied. It was the petitioner who was rash and negligent. In a head on collision accident, drivers of both the vehicles are to be held responsible. The petitioner was not having valid driving licence. The insurance policy is not in the name of the first respondent. The claim is excessive.

4. Brief substance of the additional counter filed by the second respondent is as follows:

The petitioner is an employee and he is entitled to compensation under the ESI Act and the petitioner is receiving compensation from the ESI corporation. Under Section 53 of the ESI Act, there is a bar against receiving or recovering any compensation or damages under any other law. The accident has occurred in the course of employment. Since the petitioner is receiving monthly compensation amount from the ESI corporation, he is not entitled to claim compensation under the Motor Vehicles Act.



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5.The petitioner examined two witnesses and marked six(6) documents.

No witness was examined and no document was marked on the side of the respondent. The Tribunal dismissed the petition.

6.Against the dismissal of the claim petition, the appellant has filed this Civil Miscellaneous Appeal on the following grounds:

The Tribunal failed to consider the judgment reported in 2012(2) TNMAC 245, wherein the Court has held that the Bar under section 53 of the MV Act, was not applicable to claim compensation under Section 166 of the MV Act. It is stated that the Tribunal ought to have fixed the loss of income as Rs.3,000/- per month, where as the ESI Corporation has given only Rs.80/- per day. The Tribunal ought to have granted Rs.50,000/- towards pain and sufferings, Rs.1 Lakh towards loss of amenities.

7.On the side of the appellant it is further stated that the injured claimed compensation from the ESI Corporation on a different footing only Rs.80/- per day was received as ESI pension. This MCOP was filed to receive compensation from the insurer of the offending vehicle and a case under the MV Act is maintainable.



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8.A judgment of the Hon'ble High Court of Calcutta reported in **2018(2) TN MAC 683(DB) (Cal.)** in the case of **Ruma Raha Roy and others vs United India Insurance Co.Ltd and others**, is cited.

9.On the side of the appellant, another judgment of the Hon'ble High Court of Karnataka, reported in **2013 ACJ 1581** in the case of **Venkataramanappa vs S.Ananda and others**, is cited,, wherein it is held that

"Tribunal rejected claim application as barred under Section 53 of ESI ct on the ground that injured received reimbursement of medical expenses - Claimant is entitled to claim compensation from ESI only when accident arises out of employment and during the course of employment - Claimant was driving car when accident occurred and not working as security guard - Whether Tribunal was justified in dismissing claim application- Held: no; claim application was not filed against his employer; ESI Act does not bar right to claim compensation against third parties."



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10. On the side of the respondent it is stated that there was an AIL coverage for the appellant. The appellant is receiving compensation at the ratio of Rs.80/- per day. Under Section 53 of the Employees' State Insurance Act, 1948, which reads as follows:

"53.Bar against receiving or recovery of compensation or damages under any other law.

An insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the workmen's Compensation Act, 1923, or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act."

11. On the side of the respondent, a judgment of this Court reported in **2010 ACJ 775** in the case of **The Management M/s. Jothi Calendering Mills vs Perumal and another** is cited, wherein it is held that,

"7.The contention of the appellant herein that the industrial establishment concerned in this appeal was one covered by the provisions of the ESI Act has not been disputed by the ESI Corporation (the second respondent herein). It is not the case of either the first respondent or the ESI



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corporation that the first respondent was an exempted employee or a person who did not come in the definition of an employee under the Employees' State Insurance Act, at the relevant point of time, namely when the accident occurred. The above said observation of the Hon'ble Supreme Court will be enough to accept the contention of the learned counsel for the appellant and reject the contention of the learned counsel for the first respondent.

8. Under these circumstances, this court accepts the contention of the learned counsel for the appellant that the first respondent was an insured employee and hence he could claim benefits under the ESI Act alone and not under the Workmen's Compensation Act. "

12. On the side of the respondent another judgment of the Hon'ble Bombay High Court(Aurangabad Bench) reported in **2020 ACJ 1488**, in the case of **Munmahesh vs Ashish Nemichand Katariya and others**, is cited, wherein it is held that,

"11..... However, this defense of claimant holds no substance in view of law settled by Apex Court in National Insurance Corporation Vs Hamida Khatoon(supra) and Bharagath Engineering Vs. R.Ranganayaki(supra). As claimant was in the category of insured employee, in view of



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bar under Section E.S.I., Act, the claimant is not entitled to recover compensation from his employer under the Workman's Compensation Act, 1923(E.C., Act), in respect of a employment injury sustained by him. Therefore, the learned Commissioner is fully justified while dismissing the claim petition."

Another judgment of the Hon'ble Supreme Court reported in **2003 ACJ 393** in the case of **Bharagath Engineering Vs R.Ranganayaki and others**, is cited.

13.It is seen that there is a bar in Section 53 of the ESI Act. The injured person is entitled to claim compensation either under the ESI Act or under the Motor Vehicles Act. It is seen that the injured herein has applied for compensation under the ESI Act and he was getting compensation at the ratio of Rs.80 per day. In the judgment reported in **2018 2 TM 683(stated supra)**, **cited** by the appellant, it is clearly stated that when there was no evidence that the victim suffered injury in the course of employment, the claim under the Motor Vehicles Act is maintainable. Here, the appellant has already received compensation under the ESI Act and hence this citation is not applicable to the fact of the present case.



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14. On the side of the appellant, another judgment of the Hon'ble High Court of Karnataka at Bangalore reported in **2013 ACJ 1581** in the case of **Venkataramanappa Vs S.Ananda and others**, is cited, wherein it is held that taking treatment in the ESI Hospital is not a bar to claim compensation under the Motor vehicles Act. The facts of the case cited, are not applicable to the facts of the present case.

15. In view of the bar under Section 53 of the ESI Act and in view of the admission that the appellant is receiving compensation under the ESI Act, in view of the fact that the citations referred by the appellant are not applicable to the present case, it is decided that there is nothing sufficient enough to interfere with the orders of the Tribunal and hence this appeal is dismissed. No costs.

12.12.2022

Index: Yes / No
Internet : Yes / No

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R. THARANI, J

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To

- 1.The Motor Accidents Claims Tribunal(Additional District Judge /
Fast Track Court No.2), Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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